CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 2386 of 2012

(Arising out of Order-in-Appeal No.49/2011/Cus.B dated 23.06.2011 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Hindustan Granites
No.5, Lalbagh-Hosur Road,
Wilson Garden,
Opp. 2nd Cross,
Bangalore – 560 027.

Appellant(s)

VERSUS

The Commissioner of Customs (Appeal)
Central Revenue Building,
P.B. No.5400, Queen's Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Ms. Bhavana. B, Advocate for the Appellant.

Shri K.A. Jathin, Deputy Commissioner (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20953 / 2025

DATE OF HEARING: 17.01.2025

DATE OF DECISION: 03.07.2025

PER: R. BHAGYA DEVI

Briefly, the facts of the case are that the appellant M/s. Hindustan Granites, Bangalore are 100% Export Oriented Unit (EOU) manufacturing granite slabs and were permitted to undertake domestic clearances on payment of appropriate duty.

Later on, the appellant filed a refund claim for the duty-paid towards Domestic Clearance Area (DTA) during the period from 2004-2005 to 2008 on the ground that the Hon'ble Supreme Court in the case of **Aman Marble Industries vs. Commissioner of Central Excise: 2003 (157) ELT 393 (SC)**, wherein it was held that cutting, sewing granite marble blocks into slabs do not amount to manufacture. The Commissioner (Appeals) in the impugned order observing that after the amendment to the tariff that cutting, sewing granite marble box into slabs amounted to manufacture and held that the appellant was liable to duty from 01.03.2006 onwards and hence, the claim for refund was not maintainable for the period after 01.03.2006. For the period 2004-2005 upto 28.02.2006, the claim was rejected on the ground of time bar, since the refund claim was filed on 19.02.2008 which was beyond the time limit prescribed by law. He also noted that the appellant in their Writ Appeal had declared that they would be undertaking to refund the amount collected as duty from customers to answer the question of unjust enrichment. However, it was observed that since the refund claim is rejected on the ground of limitation, he did not wish to labour on other aspects of defences relating to unjust enrichment. Aggrieved by this order, the appellant is in appeal before us.

2. The learned counsel submitted that at the outset since the Finance Act, 2006 vide Section 67(a) amended the First Schedule to the Central Excise Tariff Act 1985, inserting Note 6 to Chapter 25 with effect from 01.03.2006 in terms of which Process of cutting, sewing and polishing of stone blocks into slabs or tiles was considered as amounting to manufacture, they were liable to pay duty. He fairly concedes that he is not eligible for the refund for the period after 01.03.2006 and restricts his claim only for the period from April 2004 to February 2006. He

submitted that in view of the decision by the Hon'ble Supreme Court in the case of **Aman Marble Industries Private Limited** (supra) wherein it was held that the activity of cutting and sewing of marble blocks into slabs does not amount to manufacture, therefore, they claim that the activity carried out by the appellant did not amount to manufacture. Since the judgment was delivered only in 2007, the appellant immediately took steps to file the refund application on 19th February 2008, which was rejected by the original authority and by the Commissioner (Appeals) in the impugned order. It is submitted that it is a settled position of law that the authority which recovers an amount without any authority of law cannot be permitted to retain the amount, merely because the taxpayer was not aware at that time. Where the recovery being made was without any authority, the limitation prescribed for claim of refund is to be taken from the date of discovery of the mistake. In this regard, he places his reliance on the decision of the Hon'ble Supreme Court in the case of **M/s. Sri Vallabh Glass Works Ltd. vs. Union of India: 1984 AIR 971** and the Hon'ble Delhi High Court in the case of **Hind Agro Industries Ltd. vs. Commissioner of Customs and Others: 2007 (98) DRJ 1 (DB.)**. It is further submitted that appellant filed a Writ Petition No.31316/2011 before Hon'ble High Court of Karnataka and the Hon'ble High Court vide order dated 19.07.2012 after considering the provisions of law and the submissions made, deemed it fit to direct the applicant to approach this Hon'ble Tribunal to seek the appeal remedy under Section 35B of the Act, in terms of which this Tribunal was empowered to grant the reliefs as sought in the aforesaid writ petition by quashing the impugned order and appeal and consequently, granting the refund of the amounts paid by the appellant. It is also submitted that the Hon'ble High Court was of the view that this Tribunal can indeed grant reliefs sought by the appellant and if this

Tribunal were to refuse to grant the reliefs on the premise that it is not empowered to do so, that would not only be contrary to law but also contrary to the aforesaid order passed by the Hon'ble High Court. He further places reliance on the decisions of a coordinate bench of this Tribunal in the case of Forius Infradevelopers LLP vs. PCCT vide Final Order No.20554/2024 in Appeal No.ST/20501/2022 dated 05.06.2024 and various other decisions, wherein this Tribunal had held that the statutory limitation period prescribed under Section 11B is not applicable to the refund claim by the appellant since the amount paid by the appellant is under mistake of law and did not constitute a tax and consequently, on its own directed refund of the amounts paid.

3. The Authorized Representative (AR) for the Revenue submitted that the original authority had observed that the marble rough blocks and granite rough blocks were classified under CTH 2515 1100 and 2516 1100 respectively. However, when the slabs were sold for DTA clearances, the same were classified under CTH 68. As per Chapter Note of Chapter 25 of Central Excise Tariff Act, 1985 *"in relation to the products of headings 2515 and 2516, the process of cutting or sawing or polishing or any other process, for converting of stone blocks into slabs or tiles, shall amount to 'manufacture"*. The reliance placed by the appellant on the decision of the Hon'ble Supreme Court in the case of **M/s. Aman Marble Industries (P) Ltd.** (supra) is misplaced. It is submitted that from the profile of the appellant and the process of manufacture, it is seen that *"the rough blocks will be trimmed in wire saw machine, the trimmed blocks set on the trolley and sent to gangsaw machine to cut into slabs and sawn slabs will be grind by using grinding machine and the slabs would be sent to epoxy machine to apply epoxy and next slabs would be sent to polishing machine for polishing"*;

accordingly, the original authority had held that the process carried out classified the products under CTH 68 and accordingly, the DTA clearances were made under CTH 68 and not under CTH 25, hence, the rejection of refund claim both on merit and limitation is to be sustained.

3.1 Further, it is submitted that the Commissioner (Appeals) had rightly rejected the refund on the ground of limitations since the duty claimed as refund was not paid under dispute nor the classification of the products was challenged at any given point of time. He also relied on the following decisions:

- **MCI Leasing (P) Ltd. Vs. Commissioner of Central Excise, Mysore: 2009 (14) STR 54 (Tri. -Bang.)** which was upheld by the Hon'ble High Court of Karnataka as reported at **2014 (33) STR 497 (Kar.)**,
- **Benzy Tours and Travels Pvt. Ltd. Vs. Commissioner of ST Mumbai-I: 2016 (43) STR 625 (Tri. Mumbai),**
- **Collector of Central Excise, Chandigarh Vs. Doab Co-operative Sugar Mills: 1998 (37) ELT 478 (S.C.),**
- **Argo Pack Vs. Commissioner of Central Excise, Surat-II: 2009 (238) ELT 750 (Tri. -Ahm.),**
- **SRF Ltd. Vs. CEGAT Chennai 2021 (377) ELT 737 (Mad.)**

4. Heard both sides. The undisputed facts are the appellant imported rough blocks falling under Chapter 25 and after undertaking various process as explained at paragraph 3, the processed goods were cleared by the appellant under CTH 68 in DTA and duty was discharged on these goods at the appropriate rates during the period from 2004-2005 to January 2008. The original authority vide Order-in-Original No.55/2008 dated 08.04.2008 rejected the refund both on merit and limitation on

the ground that the Supreme Court's decision relied upon by the appellant in the case of **M/s. Aman Marble Industries (P) Ltd.** (supra) was not applicable to the facts of the present case since the goods were cleared under CTH 68 by the appellant and secondly, the refund claim was hit by limitation. The appellant aggrieved by this order filed an appeal before the Commissioner (Appeals) and simultaneously, filed a Writ Petition No.7699/2008 before the Hon'ble High Court. The appellants vide letter dated 12.07.2008 sought withdrawal of the appeal filed before the Commissioner (Appeals) and accordingly, the Commissioner (Appeals) vide Order-in-Appeal No. 141/2008 dated 27.11.2008 dismissed the appeal as withdrawn. Meanwhile, the Hon'ble High Court of Karnataka in Writ Petition No. 7699/2008 vide order dated 24.03.2009 observed as follows:

> "10. In the impugned order dated 08.04.2008 at Annexure - B itself indicates that the petitioner had a right of appeal under Sec. 128 of the Customs Act. It appears that the petitioner had preferred an appeal before the Commissioner for Customs but it appears that the petitioner had withdrawn the appeal on 27.11.2008 subsequently and has instead approached this Court by filing the above writ petition.
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> 11. If the petitioner had the benefit of declaration of law as declared by the Supreme Court in the case of Aman Marbles Industries Private Limited -vs- Collector of C. Ex., Jaipur, even at the time of payment and collection of excise duty and if the petitioner had not questioned the legality of such levy at that time, it will be too late for the petitioner to wake up much later and agitate such questions in a refund application and further this writ petition.
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> 12. A levy without authority of law while is definitely frowned in terms of Articles 265 of the Constitution of India, the present levy and collection of excise duty was by the competent officer and until and unless it is declared that such order was bad in law by a

> superior authority as provided under the Central Excise Act and consequentially it is held that the collection under the provisions of the Act is also bad. Refund application cannot succeed by itself.
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> 13. The petitioner instead of questioning the assessment order tried his hand through a refund application and failed there. While it was open for the petitioner to pursue the remedy in that line, just because the petitioner withdraws the appeal before the Assistant Commissioner and foregoes that remedy, that development cannot constitute a ground in the present writ petition for seeking quashing of the order of the Assistant Commissioner of Customs rejecting the refund application.
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> 14. Thus, for this reason, there is no need to further examine the validity of the order passed by the Assistant Commissioner in this writ petition more so, for granting declaration in favour of the petitioner about the nature of levy of the excise duty as to whether the petitioner is entitled for claiming a refund etc.
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> 15. However, liberty reserved to the petitioner to seek revival of the appeal filed before the Commissioner of Customs as the respondents have raised availability of an alternative remedy in their objection statement."

The above order was appealed and in Writ Appeal No. 1502/2009 dated 21.08.2009 the Division Bench of the Hon'ble High Court observed as follows:

> "3. The learned single Judge, after considering all the aspects of the matter, has reached a conclusion that there was no merit in the writ petition and therefore, dismissed the same, reserving liberty to the appellant to seek revival before the Commissioner of Customs as there is a statutory remedy under the Customs Act. We see no good ground to entertain the writ appeal.
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> 4. In the result, the writ appeal fails and the same is hereby dismissed keeping open all the contentions."

4.1 The Commissioner (Appeals) considering all these aspects vide the impugned Order-in-Appeal No. 49/2011 dated 23.06.2011 reviving the Commissioner (Appeals)'s order decided the appeal on merit and held that the refund claim for the period after 01.03.2006 admittedly was not maintainable. For the period 2004-05 upto 28.02.2006 the refund claim was rejected observing as follows:

> "7. The main ground on which the appellants have sought for refund of duty paid towards DTA during the period 2004-05 to Jan 2008 is on the basis of decision in the case of Aman Marble Industries as reported in 2003 (157) ELT 393(SC) followed with other decisions, subsequently, wherein it is held cutting/sawing granite/marble blocks into slabs do not amount to manufacture. The other admitted fact is that the amendment in note 6 to chapter 25 of CET providing the cutting/sawing etc., of rough blocks amounting to manufacture under Section 2(f) of CEA, 1944 was w.e.f 1-03-06. The appellants themselves have accepted that they are not eligible for the refund for the period after 1-03-06 in view of the amendment making them liable to duty after 1-03-06. The position of levy of duty on such process of cutting/sawing/polishing etc., being accepted by the appellants and further confirmed by the amendment, no cause exists for seeking refund of duty paid on DTA after 1-03-06. I therefore find the claim for refund beyond the period of 1-03-06 is not maintainable on merits & under law.
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> 7.1 As regard the earlier period ie., 2004-05 upto 28-02-06, I find the refund claim covering the said period is made on 19-02-08. The primary issue which needs to be examined in the case is whether the claim is within the period of limitation. At this juncture it is needless to state that the law stands well settled "that authorities constituted under CEX & Customs Act are bound by the period of limitation provided in the act itself". Any period being stretched under limitation is only subjective to the case arising out of an appeal or writ, and General Law of limitation is

inapplicable. In this case, the appellants not only paid the duty unquestionably and without any protest, they did not even challenge the assessment by way of an appeal. They kept on paying duty under chapter 68 of the Tariff even after the insertion of the amendment to Note 6 of Chapter 25 CET, on 01.03.2006. Thus I find that claim of refund is liable for rejection under the provisions of the Customs Act, 1962.

7.2 Further I find from the averments made by the appellants in the writ appeal filed before the Hon'ble High Court, in which they have sworn that the decision in the case of Aman Marbles Industries came to their knowledge only in the year 2007. The appellants by the said declaration intend to count the period of limitation from the year 2007 and seek justice on the grounds of application of general law of limitation of three years in order to seek refund of the claim made by them. In this regard, I find that the appellants had paid duty on these impugned goods under Chapter 68 of the CETA, 1985 even after insertion of amendment to Note 6 of Chapter 25 on 01.03.2006, without any agitation. The Hon'ble court while examining the plea of the appellants has also observed that the appellants had not questioned the legality of such levy and it could be too late for the appellants to wake up at a much later date and agitate such questions in a refund application and further through writ petition filed by them. In the circumstances, I find that the starting point for computing limitation cannot be a presumed date in the year 2007. The appellants in the writ petition had also accepted that the appellate authority and the lower authority are all the creatures of the same statute and cannot apply the provisions of general law of limitation. It is for this said purpose the appellants had attempted to seek an alternative remedy by way of a writ before the Hon'ble High Court of Karnataka, which is not been fruitful. I find the instant refund claims have been filed on 19.02.2008, covering the period 2004-2005 to 28.02.2006 despite the fact the appellants knew the amendment to Note 6 of Chapter 25, which was effective from 01.03.2006. The belated awakening of the appellants in filing a refund claim on 19.02.2008 after accepting

> the excisability and the dutiability of the impugned goods from 01.03.2006 onwards is undoubtedly beyond the permissible limit prescribed under the statute (Central Excise Act / Customs Act). I therefore find the refund claims for the period from 2004-2005 to February, 2006 is time barred and there is no justification for application of general law of limitation".

5. Aggrieved by this order, the appellant filed another writ petition No.31316/2011 and the Hon'ble High Court of Karnataka vide order dated 19.07.2012 observed as follows:

> "This writ petition is directed against the order dated 17.06.2011 (Annexure-E) passed by the Commissioner of Customs, Appeals, Bangalore in Appeal No.49/2011. Learned counsel appearing for the petitioner does not dispute that an appeal would lie against the said order under Section 35B of the Central Excise Act, 1944. In view of the judgment of the Supreme Court in United Bank of India v. Satyawati Tondon [*AIR 2010 SC 3413*], I decline to entertain this writ petition with liberty to the petitioner to avail of the statutory remedy of appeal in accordance with law. The writ petition is accordingly dismissed".

As seen from the above order, the Hon'ble High Court had given liberty to the appellant to avail the statutory remedy of appeal in accordance with law, hence this appeal.

6. The undisputed facts are that the appellant had imported the goods under Chapter Heading 25 of the Customs Tariff Act, 1985, after undertaking the process of manufacturing as described by the original authority, the said products were cleared for DTA under Chapter Heading 68 of the Customs Tariff Act, 1985. At no given point of time, the appellant either disputed the manufacturing process or the classification of the products under Chapter Heading 68 of the Customs Tariff Act, 1985, which had attained finality. Therefore, the question of

refund without challenging the assessment is ruled-out as settled by the Hon'ble Supreme court in the case of **ITC LTD. vs.Commissioner Of Central Excise, Kolkata-IV, 2019 (368) E.L.T. 216 (S.C.)**. However, considering the fact that the Commissioner (Appeals) did not deal with the aspect of classification even accepting that the goods were classifiable under Chapter Heading 25, the question of refund was to be necessarily dealt with the provisions of Section 27 of the Customs Act, 1962.

7. In the case of **Aman Marble Industries Pvt. Ltd.** (supra), the Hon'ble Supreme Court held as:

> "Question that arises for consideration in this appeal is one whether the cutting of marble blocks into marble slabs amounts to manufacture for the purpose of the Central Excise Act. The Tribunal by a majority decision took the view that the commodity in question falls within entry 25.04 of the Tariff but to examine certain aspects on facts remitted the matter to the assessing authority.
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> **2.** The contention put forth on behalf of the appellant is that the activity carried on by the appellant does not amount to manufacture at all. The case put forth by the learned Counsel appearing on behalf of the appellant is that the cutting of blocks into marble slabs involves only sawing of the marble blocks and thereby does not bring into existence a distinct commodity so as to state that when such activity is completed a new substance has come into existence. The submission is that even after such activity is completed the marble will remain marble and, therefore, this activity does not attract tax.
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> **3.** Learned Counsel for the department however submitted that the activity has been specifically brought into Tariff item and when certain processes are applied to a commodity to make it

marketable, it certainly amounts to manufacture and thereof attracts tax under the Central Excise Act.

4. In *Rajasthan State Electricity Board* v. *Associated Stone Industries and Anr.* - JT 2000 (6) SC 522 such a question fell for consideration before this Court although in a different context, and this Court held as follows :

> *"…This a part excavation of stones from a mine and thereafter cutting them and polishing them into slabs did not amount to manufacture of goods. The word "manufacture" generally and in the ordinary parlance in the absence of its definition in the Act should be understood to mean bringing to existence a new and different article having distinctive name, character or use after undergoing some transformation. When no new product as such comes into existence, there is no process of manufacture. The cutting and polishing stones into slabs is not a process of manufacture for obvious and simple reason that no new and distinct commercial product came into existence as the end product still remained stone and thus its original identity continued."*
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> *and this position was further reiterated as follows :*
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> *"… It is not possible to accept that excavation of stones and thereafter cutting and polishing them into slabs resulted in any manufacture of goods."*

5. In the light of this decision we have no hesitation in holding that the activity carried on by the appellant does not amount to manufacture. We set aside the order passed by the Tribunal and allow this appeal".

7.1 As seen from the above decision, it clearly establishes that the process of manufacture was entirely different as the products therein were classified under Chapter Heading 25 even after cutting and sawing the marble slabs; while in the present case, the process of manufacture is entirely different wherein the finished goods were classified under Chapter Heading 68 while clearing the same into DTA. Moreover, since the assessments were final and that has not been challenged, therefore, the question of refund based on the classification dispute in some other assessee's case cannot be applied to the present facts of the case. Secondly, all refund claims are to be dealt with as per the provisions of Section 11B as is held in the case of **Mafatlal Industries Ltd. vs. Union of India: 1997 (89) E.L.T. 247 (S.C.)**, wherein the Hon'ble Supreme Court has observed as:

> "70. *Re : (II) :* We may now consider a situation where a manufacturer pays a duty unquestioningly - or he questions the levy but fails before the original authority and keeps quiet. It may also be a case where he files an appeal, the appeal goes against him and he keeps quiet. It may also be a case where he files a second appeal/revision, fails and then keeps quiet. The orders in any of the situations have become final against him. Then what happens is that after an year, five years, ten years, twenty years or even much later, a decision is rendered by a High Court or the Supreme Court in the case of another person holding that duty was not payable or was payable at a lesser rate in such a case. (We must reiterate and emphasise that while dealing with this situation we are keeping out the situation where the provision under which the duty is levied is declared unconstitutional by a court; that is a separate category and the discussion in this paragraph does not include that situation. In other words, we are dealing with a case where the duty was paid on account of mis-construction, mis-application or wrong interpretation of a provision of law, rule, notification or regulation, as the case may be.) Is it open to the manufacturer to say that the decision of a High Court or the Supreme Court, as the ease may be, in the case of another person has made him aware of the mistake of law and, therefore, he is entitled to refund of the duty paid by him? Can he invoke Section 72 of the Contract Act in such a case and claim refund and whether in such a case, it can be held that reading Section 72 of the Contract Act along with Section 17(1)(c) of the

Limitation Act, 1963, the period of limitation for making such a claim for refund, whether by way of a suit or by way of a writ petition, is three years from the date of discovery of such mistake of law? *Kanhaiyalal* is understood as saying that such a course is permissible. Later decisions commencing from *Bhailal Bhai* have held that the period of limitation in such cases is three years from the date of discovery of the mistake of law. With the greatest respect to the learned Judges who said so, we find ourselves unable to agree with the said proposition. Acceptance of the said proposition would do violence to several well-accepted concepts of law. **One of the important principles of law, based upon public policy, is the sanctity attaching to the finality of any proceeding, be it a suit or any other proceeding. Where a duty has been collected under a particular order which has become final, the refund of that duty cannot be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law.**

So long as that order stands, the duty cannot be recovered back nor can any claim for its refund be entertained. But what is happening now is that the duty which has been paid under a proceeding which has become final long ago - may be an year back, ten years back or even twenty or more years back - is sought to be recovered on the ground of alleged discovery of mistake of law on the basis of a decision of a High Court or the Supreme Court. It is necessary to point out in this behalf that for filing an appeal or for adopting a remedy provided by the Act, the limitation generally prescribed is about three months (little more or less does not matter). But according to the present practice, writs and suits are being filed after lapse of a long number of years and the rule of limitation applicable in that behalf is said to be three years from the date of discovery of mistake of law : The incongruity of the situation needs no emphasis. And all this because another manufacturer or assessee has obtained a decision favourable to him. What has indeed been happening all these years is that just because one or a few of the assessees succeed in having their interpretation or contention accepted by a High Court or the Supreme Court, all the manufacturers/Assessees all over the country are filing refund claims within three years of such decision, irrespective of the fact that they may have paid the duty, say thirty years back, under similar provisions - and their claims are being allowed by courts. **All this is said to be flowing from Article 265 which basis, as we have explained hereinbefore, is totally unsustainable for the reason that the Central Excise Act and the Rules made thereunder including Section 11B/Rule 11 too constitute "law" within the meaning of Article 265 and that in the face of the said provisions - which are exclusive in their nature - no claim for refund is maintainable except under and in accordance therewith.** The second basic concept of law which is violated by permitting the above situation is the sanctity of the provisions of the Central Excises and Salt Act itself. The Act provides for levy, assessment, recovery, refund, appeals and all incidental/ancillary matters. Rule 11 and Section 11B, in particular, provide for refund of taxes which have been collected contrary to law, i.e., on account of a mis-interpretation or mis-construction of a provision of law, rule, notification or regulation. The Act provides for both the situations represented by Sections 11A and 11B. As held by a seven - Judge Bench in *Kamala Mills,* following the principles enunciated in *Firm & Illuri Subbaiya Chetty,* the words "any assessment made under this Act" are wide enough to cover all assessments made by the appropriate authorities under the Act whether the assessments are correct or not and that the words "an assessment made" cannot mean an assessment properly and correctly made. It was also pointed out in the said decision that the provisions of the Bombay Sales Tax Act clearly indicate that all questions pertaining to the liability of the dealer to pay assessment in respect of their transactions are expressly left to be decided by the appropriate authorities under the Act as matters falling within their jurisdiction. Whether or not a return is correct and whether a transaction is exigible to tax or not are all matters to be determined by the authorities under the Act. The argument that the finding of the authority that a particular transaction is taxable under the Act is a finding on a collateral fact and, therefore, resort to civil court is open, was expressly rejected and it was affirmed that the whole activity of assessment beginning with the filing of the return and ending with the order of assessment falls within the jurisdiction of the authorities under the Act and no part of it can be said to constitute a collateral activity not specifically or expressly included in the jurisdiction of the authorities under the Act. It was clarified that even if the authority under the Act holds erroneously, while exercising its jurisdiction and powers under the Act that a transaction is taxable, it cannot be said that the decision of the authority is without jurisdiction. We respectfully agree with the above propositions and hold that the said principles apply with equal force in the case of both the Central Excises and Salt Act and the Customs Act. Once this is so, it is un-understandable how an assessment/adjudication made under the Act levying or affirming the duty can be ignored because some years later another view of law is taken by another court in another person's case. Nor is there any provision in the Act for re-opening the concluded proceedings on the aforesaid basis. We must reiterate that the provisions of the Central Excise Act also constitute "law" within the meaning of Article 265 and any collection or retention of tax in accordance or pursuant to the said provisions is collection or retention under "the authority of law" within the meaning of the said article.

In short, no claim for refund is permissible except under and in accordance with Rule 11 and Section 11B. An order or decree of a court does not become ineffective or unenforceable simply because at a later point of time, a different view of law is taken. If this theory is applied universally, it will lead to unimaginable chaos. It is, however, suggested that this result follows only in tax matters because of Article 265. The explanation offered is untenable as demonstrated hereinbefore. As a matter of fact, the situation today is chaotic because of the principles supposedly emerging from *Kanhaiyalal* and other decisions following it. Every decision of this Court and of the High Courts on a question of law in favour of the assessee is giving rise to a wave of refund claims all over the country in respect of matters which have become final and are closed long number of years ago. We are not shown that such a thing is happening anywhere else in the world. Article 265 surely could not have been meant to provide for this. We are, therefore, of the clear and considered opinion that *the theory of mistake of law and the consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by an assessee taking advantage of the decision in another assessee's case. All claims for refund ought to be, and ought to have been, filed only under and in accordance with Rule 11/Section 11B and under no other provision and in no other forum.* An assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case cannot be ignored and refund ordered in his favour just because in another assessee's case, a similar point is decided in favour of the manufacturer/assessee. (See the pertinent observations of Hidayatullah, CJ. in *Tilokchand Motichand* extracted in Para 37). The decisions of this Court saying to the contrary must be held to have been decided wrongly and are accordingly overruled herewith.

99. The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.

(iv) It is not open to any person to make a refund claim on the basis of a decision of a Court or Tribunal rendered in the case of another person. He cannot also claim that the decision of the Court/Tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law.

A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment of levy has become final in his case, he cannot seek to reopen it nor can he claim refund without re-opening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund.

104. The claims for refund can arise under three broad classes and the issue of ouster of jurisdiction of civil courts can be understood by focussing on the parameters of these classes which are as follows :

Class III : "Mistake of Law" — where claims for refund are initiated on the basis of a decision rendered in favour of another assessee holding the levy to be : (1) unconstitutional; or (2) without inherent jurisdiction.

Ordinarily, no assessee can be allowed to reopen proceedings that have been finally concluded against him on the basis of a favourable decision in the case of another assessee. This is because an order which has become final in the case of an assessee will continue to stand until it is specifically recalled or set aside in his own case."

7.2 In addition, in the case of **Commissioner of CGST and Central Excise, J & K vs. Saraswati Agro Chemicals Pvt. Ltd. 2023 (386) E.L.T. 193 (S.C.)**, the apex court had clearly held as follows:

"9. The contention of the Revenue is that in view of the subsequent judgment of this Court in *M/s. Unicorn Industries*, recoveries could be made from the assessees with regard to the refund of education cess made by the Department or if not paid by the assessees following the judgment in *SRD Nutrients (P) Limited*. In the above circumstances, appeals were filed before the High Court by the assessees. In the instant case, the High Court had raised the following question of law and answered it against the Revenue :-

> *"Whether the assessee is liable to return the Education Cess and Secondary & Higher Education Cess on the changed view of law as subsequently laid down by the Full Bench of the Supreme Court in Unicorn Industries v. Union of India reported in (2020) 3 SCC 492, overruling SRD Nutrients (P) Ltd. v. CCE (supra) on the basis of which the aforesaid cess was refunded to the Assessee."*

10. In our view the High Court has rightly answered the aforesaid question. The High Court in the impugned order while considering the judgment passed by this Court in *SRD Nutrients (P) Limited* (supra) as well as in *M/s. Unicorn Industries* (supra) has observed in Paragraph 74 as under :

> *"Applying the aforesaid principle in the cases at hand, since the assessee has been held entitled to the refund of the Educational cess and Secondary & Higher Educational cess on the basis of a judgment and order of the Supreme Court in case SRD Nutrients which was in vogue at the relevant time, the appellants are not entitled to make recovery of the said refunded amount on the basis of the subsequent decision of the Supreme Court rendered in the case of Unicorn Industries. If such an action is permitted, it will open a Pandora box and the lis between the parties which had attained finality will never come to an end. This would be against the public policy which envisages providing quietus to litigation at some stage."*

11. In substance, the High Court has stated that the decision in *SRD Nutrients (P) Limited* (supra) had attained finality and was binding on the parties thereto. Therefore, the subsequent decision of this Court overruling *SRD Nutrients (P) Limited* (supra) in the case of *M/s. Unicorn Industries* (supra) cannot have a bearing on past decisions which had attained finality although they had followed *SRD Nutrients (P) Limited* (supra), which was subsequently overruled in *M/s. Unicorn Industries*. Otherwise a pandora's box would be opened and there would be no end to litigation, which is against public policy.

12. That is exactly what is sought to be done by the reference order dated 27-9-2021. When we read the reference order in light of the what has been discussed, we find that the reference order was unnecessary.

13. In the circumstances, the Special Leave Petitions are dismissed".

7.3 In a similar set of facts, the Hon'ble Supreme Court in the case of **Union of India vs. Saraswati Marble & Granite Industries Pvt. Ltd. 2015 (326) E.L.T. 427 (S.C.)** observed as follows:

"2. These two appeals are filed challenging the judgments of the High Court of Rajasthan whereby the excise duty and penalty which was paid by the respondents herein have been quashed.

3. The proceedings arise out of Show Cause Notices issued to the respondents on the ground that cutting of marble blocks into marble slabs and tiles amounted to the manufacturing activity but the respondents were not paying excise duty thereon. The Order-in-Original was passed confirming the demand made in the Show Cause Notices. This order was upheld by the Tribunal as well. The matter was not taken further by the respondents and thus, it attained finality. Not only that, on that basis, amount of excise duty and penalty was recovered from the respondents after the proceedings were over some time in February, 2001.

4. It so happened that identical issue was taken up by some other assessee contending that the cutting of marble blocks into marble slabs and tiles did not amount to manufacture within the meaning of Section 2(f) of the Central Excise Act, 1944, and therefore, no excise duty was payable. That dispute landed up in this Court and was finally decided in the case of *'Rajasthan State Electricity Board* v. *Associated Stone Industries & Anr.* [JT 2000 (6) SC 522] holding that it did not amount to manufacture activity.

5. After this judgment was rendered, the assessees filed writ petitions seeking refund of the amount which they had paid and the High Court allowed those writ petitions directing the Union of India to refund the amount of duty, interest and penalty.

6. A neat submission which his made by Mr. A.K. Sanghi, learned senior counsel appearing for the Union of India, is that no such writ petition to claim refund of the excise duty, penalty and interest was maintainable when the proceedings in respect of respondents had attained finality and amount recovered. Merely because this Court in some other judgment, at a subsequent date, took a different view and settled the position in law, is not a valid ground available to the respondents to approach the High Court under Article 226 of the Constitution of India and claim such a relief.

7. The aforesaid submission is valid and justified in law. Insofar as the respondents are concerned, the duty was paid by them after proper adjudication and a particular view was taken which was upheld by the Tribunal as well. As mentioned above, no further appeals were brought by the respondents and, therefore, such proceedings had attained finality. The order of refund of this amount, merely because this Court took different view thereafter in some other case, would not be permissible. Thus, insofar as direction contained in the impugned judgments to refund the amount of duty, interest and penalty is concerned, the same is set aside. However, once this Court has settled the position of law holding that the aforesaid process would not amount to

> manufacture, from the date of the judgment of this Court, the Excise Department is not entitled to recover any such excise duty from the respondents".

7.4 The above decision is aptly applicable to the present set of facts; and hence, the claim for refund had to be filed necessarily within six months from the date of dispute and as rightly held by the Commissioner (Appeals), the claim is clearly time barred as it was filed on 19.02.2008 for the duty paid for the period from 2004-2005 to February 2006.

8. It may not be out of place to narrate the observations of the Hon'ble High Court of Karnataka when the appellant in the first instance filed a Writ Petition. wherein the Hon'ble High Court observed as follows:

> "11. If the petitioner had the benefit of declaration of law as declared by the Supreme Court in the case of Aman Marbles Industries Private Limited -vs- Collector of C. Ex., Jaipur, even at the time of payment and collection of excise duty and if the petitioner had not questioned the legality of such levy at that time, it will be too late for the petitioner to wake up much later and agitate such questions in a refund application and further this writ petition.
>
> 12. A levy without authority of law while is definitely frowned in terms of Articles 265 of the Constitution of India, the present levy and collection of excise duty was by the competent officer and until and unless it is declared that such order was bad in law by a superior authority as provided under the Central Excise Act and consequentially it is held that the collection under the provisions of the Act is also bad. Refund application cannot succeed by itself.
>
> 13. The petitioner instead of questioning the assessment order tried his hand through a refund application and failed there. While it was open for the petitioner to pursue the remedy in that line,

> just because the petitioner withdraws the appeal before the Assistant Commissioner and foregoes that remedy, that development cannot constitute a ground in the present writ petition for seeking quashing of the order of the Assistant Commissioner of Customs rejecting the refund application.
>
> 14. Thus, for this reason, there is no need to further examine the validity of the order passed by the Assistant Commissioner in this writ petition more so, for granting declaration in favour of the petitioner about the nature of levy of the excise duty as to whether the petitioner is entitled for claiming a refund etc."

9. In view of the above discussions and also considering all the facts, the appeal is dismissed.

(Order pronounced in Open Court on 03.07.2025.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)